

GUIDANCE NOTE

Irritancy Protection Agreement



1. Introduction

If a lease is irritated or terminated early for any reason any sublease granted out of the lease will fall, leaving the subtenants without any right of occupation. In certain circumstances (for example a sublease granted out of a long ground lease) the landlords may be prepared to enter into an agreement directly with the subtenants to provide that, if the lease is terminated early for any reason which is not the subtenants' fault, the landlords will grant a new lease of the sublet premises direct to the subtenants for the remainder of the unexpired term of the lease. This Agreement is designed to be used in such a situation although it will depend on the facts of each case whether such an agreement is appropriate.

2. Parties and definitions

If there are no guarantors various amendments are required to the Agreement including deleting the designation at the beginning of the Agreement, amending the recitals, amending the definitions by deleting Guarantors, Guarantee and New Guarantee and making all consequential amendments to the body of the Agreement.

It may be that the Property let by the Sublease is different from the premises let by the Lease particularly if the Lease is a ground lease. Provision has been made for this in the recitals.

Consider carefully whether the definition of New Lease will work given the terms of the Sublease particularly if the Sublease is drafted by reference to the Lease. If the Sublease was not reviewed by the Landlords' solicitors when the Landlords' consent was given to the grant of the Sublease, it will need to be reviewed before the Landlords enter into this Agreement.

3. Clause 2 Irritancy protection

The Agreement has been drafted on the basis that the obligation to enter into the New Lease only arises when the parties comply with the notice provisions in the Agreement. At the time when the Lease is terminated, the Subtenants may not wish to take up the New Lease and this allows them that option.

4. Clause 3 New Lease [and New Guarantee]

This clause sets out the proposed timetable for the preparation, execution and registration of the New Lease and, if appropriate, the New Guarantee. Consider if the timescales are appropriate to the transaction being contemplated. Clause 3.3 has been drafted with the intention that the Landlords will not be obliged to sign the New Lease until they are in receipt of the New Guarantee duly signed by the Guarantors.

5. Clause 5 Costs

The costs clause has been drafted on the basis that the Subtenants will bear all the costs of the Agreement, New Lease and any New Guarantee but this is a matter of negotiation between the parties and can be amended as appropriate.

6. Clause 6 Alienation

As it is our experience that this Agreement is most commonly requested by Subtenants to protect their position, it seems appropriate that any Landlords' successors are bound either to enter into a new agreement on the same terms as this Agreement or to take an assignation of the Landlords' interest in the Agreement to continue to protect the Subtenants for the duration of their tenancy. The Landlords' successors will be aware of this requirement as part of their due diligence prior to acquiring the Property. The Agreement does not, however, provide for (nor, in the market, would one expect to see) any commitment by the Landlords or their successors that such an Agreement will be entered into with any successors to the Subtenants' interest.